IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE

FIRST APPEAL NO.2633 OF 1983

1. Haji Sayyed Habib Sayyed Nawab Saheb Peerzade, since deceased through Heirs:

(a) Smt.Zaibunnisa wd/o. Habib Peerzade
(b) Smt.Raisa Abdul Quadir Shaikh residing at 28, Krekal Dries, Delsun Stokkam, Belgie, Belgiek
(c) Shahed Habib Peerzade r/o. 2448, Badi Dargah Sharif Nashik
(d) Naheb Habib Peerzade
(e) Smt.Shahin Abdul Zahoor Shaikh r/o. Kirti Construction, 5 Star Bakery, Kondhva Khurd, Pune
(f) Haseeb Habib Peerzade Nos.(a), (c), (d) and (f) residing at 2448, Badi Dargah Sharif, Nasik-422 001

2. Khalil Ahmed Badruddin Peerzade

3. Sayyed Hanif Sayyed Umar Saheb since deceased, through Heirs:
(a) Sayyad Allauddin Peerzade
(b) Sayyad Amena Peerzade
(c) Sayyad Wasim Peerzade
(d) Sayyad Naizam Peerzade
(e) Sayyad Aziz Peerzade
(f) Sayyad UpajumPeerzade
(g) Sayyad Asma Peerzade

4. Mohammed Moinuddin Sirajuddin Kokni

5. Mir Wahedali Kadumia Peerzade since deceased by his heirs and L.Rs.

(a) Smt.Aminbagum wd/o. Wahidali Peerzade
(b) Shri Kamrali Wahidalli Peerzade
(c) Shri Sajeedali Wahidali Peerzade
(d) Kum.Nizwana Wahidali Peerzade
(e) Kum.Shabana Wahidalli Peerzade
(f) Smt.Javeda Iqbal Kazi
(g) Smt.Gassia Jamad Kazi

(h) Smt.Farrana Sikandar Jagirdar

6. Sayyed Mohomedali Sayyed Nawab
Saheb Peerzade

7. Sayyed Jalal Sayyed Nawab Saheb
Peerzade, since deceased, through
Heirs and L.Rs:

8. Bashiruddin Badruddin Peerzade ... Petitioners

V/s.

1. Nisarali Hadayatali
State Transport c/o. Depot Manager
State Transport, Malegaon,
State Transport, Malegaon,
Dist.:Nasik
(Appeal abated as against
Respondent No.1 vide Court's
order dated 12.2.1993)

2. Sabirali Hidayatali
since deceased by his heirs and L.Rs:
(a) Smt.Akhtar Sultana wd/o. Sabirali
Hidayatali
(b) Maasoodalli Sabiralli
(c) Vagsar Ali Saabirali
(d) Aisanalli Sabiralli
(e) Sajjadalli Sabiralli
All residing at Nasik Dargah Sharif

3. The Charity Commissioner,
Maharashtra State, 83, Dr.Annie
Besant Road, Worli, Bombay-18

4. Chhotemir Bade Saheb Peerzade

5. Sirajuddin Mohiuddin Kokni
since deceased by his Heirs and
L.Rs:
(a) Khairunnissa w/o. Badesaheb
Kokni, since deceased, through
Heirs:

5(a)(i) Shri Hanif Badasaheb Kokni
5(a)(ii) Shri Dastagir Badasaheb Kokni
5(a)(iii) Smt.Najamunisa Mayoddin Kokni
5(a)(iv) Smt.Johrabia Sharafoddin Kokni
5(a)(v) Smt.Munnabai A. Razak Kokni
5(a)(vi) Smt.Yasima Kutaboddin Kokni
5(a)(vii) Smt.Faruka Imanoddin Kokni

(b) Sairabi w/o. Ziauddin Kokni

(c) Bakshubegum w/o.Haidarsaheb Kokni
(d) Habiabi w/o. Ahmed Kokni
(e) Shamabi w/o. Gulam Mohd.Kokni
(f) Badrunnisa w/o. Akbar Jin
(g) Gausiabegum w/o. Jalalsaheb Jin
(h) Mohinuddin Sirajuddin Kokni

6. Papamia Mohommed Yasin Peerzade
since deceased by his L.Rs:
(a) Smt.Shamshabdi Papania Peerzade
(b) Shri Moinoddin Papamia Peerzade
(c) Shri Malik Papamia Peerzade
(d) Smt.Mahrunnisa Shaminaddin
Peerzade
(e) Smt.Raksana Begam S.Iphtekhar
All Nos.6(A) to (E) above major
and having their address
C/o.Shri Moinooddin Papamia
Peerzade, Mothi Dargah Sharif
Pinjar Ghat Rasta, Nasik - 1 ... Respondents

Mr.S.G. Deshmukh for Appellants
Mr.M.D. Angal for Respondent Nos.2(a) to 2(d)
Mr.A.N. Mulla for Respondent No.2(e)
Mrs.Mulekar, AGP, for Respondent No.3

CORAM: **SMT.NISHITA MHATRE, J.**

JUDGMENT RESERVED ON: **DECEMBER 10, 2004**

JUDGMENT PRONOUNCED ON: **MARCH 11, 2005**

JUDGMENT:

. This First Appeal is preferred against the judgment and order of the Assistant Judge, Nasik who has dismissed the application of the Appellants, filed under section 72 of the Bombay Public Trusts Act (for short, the BPT Act). The orders of the Assistant Charity Commissioner under sections 19 and 20 and the Joint Charity Commissioner under section 70 have been confirmed. The Assistant Charity Commissioner held that the tomb and the Dargah of Peer Sayyad Sadik Shah

Hussaini and properties bearing CTS No.3283 in Nasik city and Survey No.46 in Indore, Taluka Dindori should all be registered as a public trust of a religious and charitable nature under the Bombay Public Trust Act, 1950.

2. The facts giving rise to the Appeal date back to the era of Emperor Shahjahan. It is the case of the Appellants that Peer Sayyad Shah Mohammad Sadik Hussaini was given certain lands including villages in Nasik, which was then known as Indore, as a grant by the Emperor Shahjahan. While doing so, Peer Sayyad Shah Mohammad Sadik Hussaini was allowed to enjoy the grant during his lifetime for his maintainance and the maintainance of his family on condition that he offered prayers for the continuance of the Moghul empire. It appears that after the death of the Peer, he was survived by four sons and a daughter. After the death of Emperor Shahjahan, the succeeding rulers issued confirmatory orders or Sanads in favour of the descendants of the Peer. Even after the area came under the Maratha Rule , the Marathas issued a sanad in favour of the Peer’s descendants who are known as Peerzade family. The dispute now has arisen because some of the members of the Peerzade family claim that just as the Dargah which has been built after the death of the Peer and is known as Peer Sayyad Shah Mohammad Sadik Hussaini

dargah, the property which was granted to the Peer by the Emperor Shahjahan and what remains from that property ought to be declared as a public trust under the Bombay Public Trust Act. The rest of the members of the Peerzade family claim that it is the property of the family and, therefore, cannot be declared as a public trust. The appellants are persons who claim that it is a part of the private property of the Peerzade family while the respondents who are also descendants of the Peer claim that the property be declared a public trust.

3. The Assistant Charity Commissioner directed that the institution designated and known by the name of Dargah of Peer Sayyad Shah Mohammad Sadik Hussaini together with CTS No.3283 at Nasik city and Survey No.46 at Indore, Tal.: Dindori be registered as a public trust of a religious and charitable nature under the provisions of the Bombay Public Trust Act. This decision was challenged by the appellants herein before the Joint Charity Commissioner by filing an appeal under section 70 of the Bombay Public Trust Act. The judgment has been confirmed. Thereafter the appellants preferred a civil miscellaneous application under section 72 of the Act before the Assistant Judge, Nasik. This application has been dismissed. Hence, this Appeal.

4. Mr.Deshmukh, appearing for the appellants,

contends that the nature of the grant which was made in favour of the ancestors of the appellants was private and, therefore, cannot be declared a public trust. He submits that the original grant made by Emperor Shahjahan in the Hizri year 1046 was in favour of the Peer for the maintainance of himself and his family. The subsequent grants by different rulers were in the nature of confirmation or renewal of the first grant made by Emperor Shahjahan. He urges that it is the first grant which would decide the nature of the grant whether it is private property owned by the Peerzade family or whether it could be considered as public property. The original grant is not on record and, therefore, it is the confirming grant which would have to be construed. Mr.Deshmukh then contends that the confirmatory order or Parwana at Exhibit 297 stipulates that the grant is of land including villages, orchards, etc. and half a seer of oil. He submits that half seer of oil was to be used for illumination of mosques, tombs and the monastery and the rest of the property that is the immovable property including villages and lands fell to the exclusive ownership of the descendants of Peer Sayyad Shah Mohammad Sadik Hussaini. He submits that the authorities below have misinterpreted these confirmatory orders by concluding that the entire grant was for the purposes of illuminating the mosque. The other document relied upon by the learned Advocate is a

list of 11 conditions, an arrangement arrived at between the descendants of the four children of the Peer in 1887. This document pertains to the property as well as the Urs or the festival held to commemorate the death anniversary of Peer Sayyad Shah Mohammad Sadik Hussaini. He then urges that the nature of the grant is obviously private since various properties have been sold to third persons by the descendants of the Peer over about 390 years since the first grant was made in favour of the Peer. Mr.Deshmukh fortifies this submission by relying on the judgment of this Court in Appeal No.402 of 1883, First Appeal No.137 of 1962, Suit No.314 of 1893, Appeal therefrom in 1897 and Suit No.507 of 1929. He submits that various Courts, including this Court, have already found that the property is private and, therefore, the authorities below have erred in concluding that the properties are in the nature of a public trust as defined under the Bombay Public Trusts Act. Mr.Deshmukh relies on the judgments in *The Bihar State Board Religious Trust, Patna v/s. Mahant Sri Biseshwar Das,* **1971(1) SCC 574;** *Radhakanta Deb v/s. Commissioner of Hindu Religious Endowments, Orissa,* **AIR 1981 SC 798;** *Khwaja Mahmud v/s. Khwaja Muhammad Hamid*, **AIR 1917 Lahore 122** in support of his submission.

5. Mr.Angal, on the other hand appearing for Respondent No.2(a) to 2(d), submits that although the

present matter is a First Appeal technically, in substance it should be treated as a Second Appeal as the two authorities below as well as the Civil Court have already decided the issue. He submits that such an appeal is not maintainable unless it involves a substantial question of law as held in **AIR 1987 SC 1; 1998 Mh.L.J. 444; 2000(2) Mh.L.J. 654**. He urges that since all the issues involved in the instant case are questions of fact, this Court should not disturb the findings given by the authorities below. He submits that the nature of the grant is obviously public which can be ascertained from the subsequent grants made during the regime of Emperor Aurangzeb, the Maratha rulers and the British. The learned Advocate submits that in 1754, the Maratha rulers had conferred two villages and lands on the descendants of the Peer. A further grant of cash allowance was also made to meet expenses for performing some religious ceremonies and maintainance of the mosque, monastery and tomb of the Peer. The learned Advocate submits that the authorities below have been correctly interpreted the documents produced before them. He also submits that the appellants being the descendants of the daughter of the Peer would have a limited interest in the religious duties for the sustainance of the property. The learned Advocate then submits that the judgment of this Court in which the appellants or their ancestors were party to

the proceedings do not directly decide the issue as to whether the properties were privately owned by the Peerzade family or were in the nature of public trust. He submits that the issue involved in these judgments was not the same as the one before me, namely, whether the properties granted under the Sanad by various rulers to the descendants of the Peer were in the nature of a public trust. The learned Advocate then submits that the property is a waqf and, therefore, a public trust since it is not settled by the wakif for himself or his family. He then submits that it is the last grant which is required to be considered and not the initial grant in order to determine whether the property constitutes a public trust. According to him, the initial grant made by emperor Shahjahan, which was later confirmed by subsequent Moghul rulers, was made for the purposes of giving the proceeds of the landed property for the subsistence of the descendants so that they could engage themselves in offering prayers for the continuance and the perpetuity of the kingdom. The learned Advocate submits that it is impossible that the grants made by Maratha rulers or the British would be for perpetuity of the Moghul empire and therefore, it is only the last grant which is required to be considered. Once the Sovereign changes, it is the grant made by the current Sovereign which is required to be considered and not the first grant. The learned Advocate then submits that the

7/12 extract in respect of the properties also indicates that the property is shown as "Sarvajanik Musalman" property. The learned Advocate submits that merely because part of the property which was granted initially has been sold, it would not indicate necessarily that the sale was effected by the members of the Peerzade family as the owners. As the Managers of the property they had alienated it. According to him, it is all the more necessary to save whatever property now remains and declare the same as a public trust so that the members of the Peerzade family do not fritter away the property at their whims and fancies. Appellant Nos.1 and 2 not being from Peerzade family, since they are the descendants of the daughter of Sayyad Shah Mohammad Sadik Hussaini, could have no claim over the property according to the learned advocate.

6. Mr.Mulla, learned Counsel appearing for Respondent No.2(e), supports the submissions made by Mr.Angal. He relies on the judgments in *Md.Kazim v/s. Abi Saghir*, **AIR 1932 Patna 33**; *Syed Mohd. Salie Labbai & Ors. v/s. Mohd. Hanifa & Ors.*, **AIR 1976 SC 1569**; *Bibi Siddique Fatima v/s. Saiyed Mohammad Mahmood Hasan,* **1978 ALL. L.J. 634**; *Saraswathi Ammal & Anr. v/s. Rajagopal Ammal,* **AIR 1953 SC 491**; *Md.Ayub Ali & anr. v/s. Amir Khan & Ors.*, **AIR 1939 Calcutta 268**; *Sunni Central Board of Waqf, UP v/s. Sirajul Haq Khan &*

Ors., **AIR 1954 Allahabad 88**; *Md.Peeran v/s. Hafiz Mohd.,* **AIR 1966 Allahabad 201**; *Abdul Sattar Ismail v/s. Abdul Hamid Sait,* **AIR (31) 1944 Madras 504** in support of his submission that properties involved are in the nature of a public trust as defined under the BPT Act and cannot be considered as private property. According to him, it is only the male descendants of the Peer, who are entitled to manage the property, the appellants being the descendants of the daughter of the Peer had no right at all in the matter.

7. On a consideration of the rival contentions, the questions which require determination are:

i) Whether the initial grant and the confirmatory grant made by Moghul emperors in favour of the Peer or his descendants are in the nature of public trusts or the properties included in the grant are private properties of the Peerzade family?

ii) Whether the decisions in the First Appeal No.137 of 1962 and 402 of 1883 operate as res judicata and determine the controversy in the present matter?

Before considering these questions, in my view, it would be appropriate to examine the preliminary objection

raised on behalf of the Respondents.

8. Mr.Angal appearing for Respondent No.2(a) to 2(d) submits that these proceedings are in the nature of a Second Appeal and, therefore, this Court should not entertain the matter unless a substantial question of law involving public importance is raised. The appellants have raised the following substantial question of law:

> Whether the Courts below erred in interpreting the following documents on record which go to the root of the matter while deciding the question whether there is a public trust and whether the property in question is a trust property?

S.No.	Exhibit No.	Nature of the document
1.	297	Sanad/Parvana/Confirmatory order issued continuing the earlier grant given by King Shahajahan.
2.	298	Eleven Sharti Yadi - a list of 11 conditions deciding how the properties of the family to be managed by the members.
3.	247	Judgment of this Hon'ble Court in Appeal NO.137 of 1962 where the nature of the property is held to be private property of the family
4.	185	Judgment in Appeal No.402
5.	235	Judgment in Suit No.314 of 1893
6.	236	Judgment in Appeal No.__ of 1897
7.	321	Judgment in Suit No.507 of 1929

Adnyapatra of 1754 granted by Maratha Rulers.

9. Mr.Deshmukh submits that the question of interpretation of the documents including the sanads, the 11 conditions, the judgments in various matters, Adnyapatr of 1754 involves a question of law as the interpretation of these documents would go to the root of the matter. He relies on the judgment in the case of *Amiruddin Hasan Nurani v/s. Salimbhai M.J. Chimthanwala & ors.*, **1997 (1) ALL. MR 434** to buttress his submission. He also submits that a learned Single Judge of this Court (Vaidyanatha, J.) in the case of *Sadanand Shantwan Salvi & Ors. v/s. Nashik Diocesan Council & Ors.*, **1997(2) Mh.L.J. 786** has decided the issue as to whether an appeal filed under section 72(4) of the Bombay Public Trusts Act would be limited to a substantial question of law. It has been held in this decision that the requirements of section 100 of Code of Civil Procedure are not applicable and an appeal under this section would lie both on facts and the law. Therefore, in my view this issue is no longer res integra. The appeal before me would have to be considered both on facts and the law.

10. The original sanad granted by Emperor Shahjahan was not filed on record before the authorities below. It appears that after the original grant was made in the

Hizri year 1046, the descendants sought a fresh grant of the lands from the succeeding ruler. The translation of this grant was produced before the authorities below. After describing the property, the document exhorts the Peer to utilise the income accruing from the land for his own needs so that he would "pray for eternity of the kingdom". The property was conferred upon the Peer and half a seer of oil was to be used for lighting the mosques, shrines and the monastery. From this document, it seems to be that the purpose of granting the land was that the Peer should be able to maintain himself in order that he would offer prayers for the continuance of the kingdom and for lighting the lamps in the dargah. The submission of the Appellants that this grant was for the personal use of the Peer and his descendants cannot be accepted on a perusal of the deed. Furthermore, the sanads from the Maratha ruler issued by the Peshwas indicate that the property could not be considered as a personal property of the descendants of the Peer. The two documents which are produced, namely, the ‘Adnyapatr’ and ‘Inampatr’ issued by Peshwas in 1753 indicate that the descendants of the Peer approached the authorities during the Maratha rule and had sought to have the land regranted to them. There is a sanad of 19.7.1854 which is also placed on record. All these documents indicate that the grant was made by the rulers in order that the Peer and his family or the descendants

of the Peer would maintain the dargah which was built after the demise of the Peer and celebrate the Urs which was held in the memory of Peer. A cash allowance was also made from the Government treasury. Another document which has been brought on record is a list of 11 conditions under which the descendants of the Peer had arrived at an arrangement for use and distribution of the income obtained from the government treasury as well as from the property in order to maintain the dargah. This document in fact lays down stringent conditions under which the income from the properties could be spent.

11. It would be fruitful to set out the definition of the term "public trust" as contained in section 2(13) of the Bombay Public Trusts Act, 1950, which is as under:

> (13) "public trust" means an express or constructive trust for either a public religious or charitable purpose or both and includes a temple, a math, a wakf, church, synagogue, agiary or other place of public religious worship, a dharmada or any other religious or charitable endowment and a society formed either for a religious or charitable purpose or for both and registered under the Societies Registration Act, 1860;

A public trust would, therefore, include a waqf or any other religious or charitable endowment.

12. A waqf has been defined under the Act as under:

> (19) "waqf" means a permanent dedication by a person professing Islam of any moveable or immoveable property for any purpose recognised by the Muslim law as pious, religious or charitable and includes a wakf by user and grants (including mashrut-ul-khidmat) for any purpose recognised by the Muslim law as pious, religious or charitable and a wakf-alal-aulad to the extent to which the property is dedicated for any purpose so recognised; but does not include a wakf such as is described in section 3 of the Mussalman Wakf Validating Act, 1913 under which any benefit is for the time being claimable for himself by the person by whom the wakf was created or by any member of his family or descendants;

13. The term "religious and charitable endowments" thought not defined under the Act had been interpreted in several decisions of the Apex Court and the various High Courts. A plain reading of the instrument of grant of the confirmatory sanad would show that it falls within the ambit of the definition of a public trust. The endowment is undoubtedly a religious or charitable endowment. The Moghul Emperor Shahjahan and the subsequent rulers of the Moghul empire as well as the Marathas and the British made the endowments for religious and charitable purposes. The initial grant made by Emperor Shahjahan and confirmed by the succeeding emperors could be construed as a waqf as defined under the Public Trusts Act. The endowment is a permanent dedication by a person professing Islam of property for a purpose recognised by Muslim law as pious, religious and charitable. This is not an endowment made for the benefit of the person creating a

waqf for himself or any member of the family of his descendants which waqf would be covered by the Musalman Waqf Validating Act 1913. The subsequent grants made by Marathas reconfirmed the grant made earlier of villages and other properties for the purposes of maintaining of the Dargah which had been built after the death of the Peer, his tomb, the monastery and other related properties.

14. By the time the Marathas were in power the Urs was celebrated in the precincts of the Dargah for which purpose the Maratha rulers made a grant of cash allowance as seen from the Sanads brought on record. When the grant was made by the Maratha rulers it certainly acquired the nature of a public trust since by then the property was being used for a public religious purpose. This is borne out from the 7/12 extract produced on record.

15. By its various judgments, the Supreme Court has considered the tests to determine as to whether a property is a public trust. In the case of *Cambay Municipality, Cambay v/s. Ratilal Ambalal Reshmwala & Ors.,* **1995 Supp (2) SCC 591**, the Court has observed that for a property to be considered a public trust as defined under section 2(13) of the Act it should have been created by a settlor or an author indicating with

reasonable certainty his intention to create a trust and transfer the trust property to the trustee(s). In the present proceedings, there can be no doubt from a perusal of deeds which are on record that it was not the intention of settlor to endow the property to the Peer and his descendants for their personal use but for the maintainance of the Dargah and other religious activities. In fact the main purpose of granting the property to the Peer was that he should offer prayers for the continuation of the Moghul empire in perpetuity. Therefore, the grant made cannot be considered as a private property or a private trust. The reliance placed on the case of *The Bier State Board Religious Trust, Patna* (supra) does not carry the case of the appellants any further. In the case of *Radhakant Deb* (supra), the Apex Court laid down certain tests which would constitute guidelines to determine on the facts of each case as to whether an endowment is of private or public nature. The Apex Court has observed as follows:

> 14. Thus, on a conspectus of the authorities mentioned above, the following tests may be laid down as providing sufficient guidelines to determine on the facts of each case whether an endowment is of a private or of a public nature:
>
> (1) Where the origin of the endowment cannot be ascertained, the question whether the user of the temple by members of the public is as of right;
>
> (2) The fact that the control and management vests either in a large body of persons or in the members of the public and the founder does

not retain any control over the management. Allied to this may be a circumstance where the evidence shows that there is provision for a scheme to be framed by associating the members of the public at large;

(3) Where, however, a document is available to prove the nature and origin of the endowment and the recitals of the document show that the control and management of the temple is retained with the founder on his descendants, and that extensive properties are dedicated for the purpose of the maintenance of the temple belonging to the founder himself, this will be a conclusive proof to show that the endowment was of a private nature;

(4) Where the evidence shows that the founder of the endowment did not make any stipulation for offerings or contributions to be made by members of the public to the temple, this would be an important intrinsic circumstance to indicate the private nature of the endowment.

16. Applying these tests, the only conclusion that one can reach is that the endowment made was of a public nature and, therefore, is covered by the definition of public trust as contained in the Bombay Public Trusts Act.

17. The judgments cited by Mr.Deshmukh in the case of *Keki Pestonji Jamdar v/s. Rodeabai Khodadad Merwan Irani*, **1971 Bom.L.R. (Vol.LXXIV) 198** does not carry his case any further since it is not germane for deciding the issue before me. The authorities have considered some of the judgments cited before me and have rightly applied the principles enunciated to the case at hand. The public character of the trust has been established.

18. This takes me to the second question raised i.e., whether the previous judgments of this Court operate as res judicata in the matter. The submission of Mr.Deshmukh that the issue as to whether the property is a public trust or a private property is no longer *res integra* in view of the judgments of this Court in Appeal No.402 of 1883 and Appeal No.137 of 1962 and of the District Court of Nasik in Appeal No.193 of 1897 cannot be accepted. The issue which is to be decided in these proceedings was not directly involved in any of the earlier proceedings. In fact in the judgment of this Court in Appeal No.402 of 1883 it has been observed that the character of the property has been regarded in different ways by different governments. It was further observed that the Maratha government looked upon the estate in question as dedicated to the maintainance of the Sayyad Shah Sadiq dargah and of charities connected with it. It has been further observed that the estate as a waqf must have had a quasi public that is religious character. This Court made these observations while dealing with a dispute of the family members, inter se. Therefore, the judgment in Appeal No.402 of 1883 does not in any manner render the findings of the authorities below, illegal.

19. The judgments of this Court in Appeal No.137 of 1962 also was in respect of a dispute which arose

between Peerzade family members. Each branch of the family claimed to be managing the properties. The point at issue was as to who was entitled to the rents payable in respect of the properties in question. In my view, this judgment does not in any manner reflect on the status of the property. Appeal No.193 of 1897 which arose from Civil Suit No.314 of 1893 was in respect of the heirship of Kader Ali's estate. In my view, this judgment also does not carry the case of the appellant any further nor can it be said that the issue before me cannot be decided as it has been already decided in earlier proceedings and, therefore, is barred by the principle of *res judicata.*

20. In the case of *Syed Mohd. Salie Labbai & Ors. v/s. Mohd. Hanifa & Ors.*, **AIR 1976 SC 1569,** the Supreme Court considered the question as to whether the adjuncts to a mosque which are also used for a religious purpose become part of the mosque. The Supreme Court was of the view that they constituted wakf properties and had been used as such for a long time so as to culminate into a valid public wakf. The contention raised by the appellants in that case was similar to the one here, that previous judgemnets operate as res judicata and, therefore, the public character of the wakf could not be reagitated. The Supreme Court was of the view that since the public character of the other

properties in the wakf was not in issue those judgements did not operate as res judicata.

21. The Assistant Charity Commissioner has considered every aspect of the matter in great detail and has rightly concluded the issue and held that the grant of the property was in the nature of a public Charitable Trust. The judicial pronouncements by the Supreme Court and the various High Courts have been properly appreciated and applied. The Joint Charity Commissioner and the Assistant Judge, Nasik have confirmed the order in Appeal. I am therefore, of the opinion that the conclusion arrived in the impugned judgment must be confirmed. The First Appeal is dismissed. No order as to costs.

22. In view of the First Appeal itself being dismissed, the Civil Revision Application No.400 of 1987 does not survive and the same is disposed of accordingly.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO.1239 OF 2004
IN
FIRST APPEAL NO.2633 OF 1983

Office Notes, Office Memoranda of Coram, appearances, Court's Order or Directions and Registrar's Orders	Court's or Judge's Orders

Mr.M.D. Angal for Applicants
Mr.Deshmukh for Respondent Nos.1(a) to (f)

CORAM: **SMT.NISHITA MHATRE, J.**

DATED: **MARCH 11, 2005**

P.C.:

. This Civil Application is filed for removal of Respondent No.9 as Receiver and for a direction against him to submit accounts with regard to the trust activities from the date of his appointment.

2. Hence, Rule. Rule returnable in eight weeks. Mr.Deshmukh waives service on behalf of Respondent Nos.1(a) to (f). Civil Application be listed before regular Court.

3. Issue Notice to Respondent No.9, returnable in eight weeks.